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Counsel for Weneta M. A. Kosmala, Chapter 7 Trustee for  
The Tulving Company, Inc.

**UNITED STATES BANKRUPTCY COURT**  
**CENTRAL DISTRICT OF CALIFORNIA**  
**SANTA ANA DIVISION**

In re:

THE TULVING COMPANY, INC., a California  
corporation,

Debtor.

Case No.: 8:14-bk-11492-ES

Chapter 7

**NOTICE OF MOTION AND MOTION FOR  
ORDER APPROVING TRUSTEE'S  
STIPULATION WITH CREDITORS SUSAN  
THOMPSON AND LAWRENCE  
THOMPSON REGARDING CREDITORS'  
DETERMINATION TO OPT OUT OF  
ERROR COIN DISTRIBUTION**

[No Hearing Required, Unless Requested]

**TO THE HONORABLE ERITHE SMITH, UNITED STATES BANKRUPTCY JUDGE,  
THE OFFICE OF THE UNITED STATES TRUSTEE, PARTIES THAT HAVE FILED  
REQUESTS FOR SPECIAL NOTICE, AND OTHER INTERESTED PARTIES:**

**PLEASE TAKE NOTICE** that Weneta M.A. Kosmala, the duly appointed chapter 7 trustee  
("Trustee"), in the above captioned case of the Tulving Company, Inc., the debtor herein ("Debtor")  
hereby files this motion (the "Motion") for entry of an order, pursuant to Sections 363 and 105 of  
title 11 of the United States Code, 11 U.S.C. § 101 et seq. (the "Bankruptcy Code"), to approve the  
stipulations by and between the Trustee and creditors Susan Thompson and Lawrence Thompsons  
(the "Thompsons"), providing for the Thompsons to opt-out of receiving their distribution of Error

1 Coins. A copy of the stipulation is attached as **Exhibit 1** to the Declaration of Weneta M.A.  
2 Kosmala (the "Kosmala Declaration") annexed to the Motion.

3 **PLEASE TAKE FURTHER NOTICE** that the Motion is based on this Notice of Motion  
4 and Motion, Memorandum of Points and Authorities, the Kosmala Declaration, the appended  
5 stipulation and all pleadings, documents and records on file with this Court, as well as any other  
6 documentary evidence as may be presented to this Court.

7 **PLEASE TAKE FURTHER NOTICE** that, pursuant to LBR 9013-1(o), any response or  
8 request for a hearing on the Motion, in the form required by LBR 9013-1(f), must be filed with the  
9 Court and served on the Trustee's counsel (at the address indicated above) within 14 days after service  
10 of this Motion. Pursuant to LBR 9013-1(h), the failure to timely file and serve a response to this  
11 Motion may be deemed consent to the relief requested in the Motion. No hearing will be held if no  
12 response and request for hearing is filed and served and, in the event that no response and request for  
13 hearing is filed and served in a timely manner, the Trustee will lodge an order with the Court granting  
14 this Motion.

15 **WHEREFORE**, the Trustee respectfully requests that this Court enter an order: (a) granting  
16 the Motion; (b) approving the stipulation between the Trustee and the Thompsons; (c) authorizing the  
17 Trustee to take such actions as are necessary and appropriate to implement the stipulation with the  
18 Thompsons, and (d) granting such other and further relief as is just and proper under the  
19 circumstances.

20 Dated: January 3, 2018

PACHULSKI STANG ZIEHL & JONES LLP

21 By /s/ Linda F. Cantor  
Linda F. Cantor

22  
23 Counsel for Weneta M.A. Kosmala,  
Chapter 7 Trustee

MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

The Motion seeks approval of a stipulation (the “Stipulation”) between the Trustee and the Thompsons, a copy of which is appended to the annexed Kosmala Declaration as **Exhibit 1**. The Stipulation provides for the Thompsons to opt-out of receiving their allocation of Error Coins which were distributed in accordance with the Distribution Order<sup>1</sup> entered by the Court. Under the circumstances of this case, the Trustee believes good cause exists to allow the Thompsons to opt-out of receiving their Error Coins.

II.

JURISDICTION AND VENUE

The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue of this matter is appropriate pursuant to 28 U.S.C. §§ 1408 and 1409.

III.

STATEMENT OF FACTS

A. General Background of the Debtor

Debtor The Tulving Company, Inc. (“Tulving”) was in the business of selling and purchasing gold, silver, coins, bullion, and other precious metals through its internet website or by phone. Prior to the filing of this bankruptcy case, customer complaints concerning delayed or undelivered orders were increasingly made to the Better Business Bureau against the Debtor. In early March 2014, a class action lawsuit was filed against the Debtor and its president and sole shareholder, Hannes Tulving (“Hannes”), in the United States District Court for the Northern District of California.

The Debtor ceased operations on or about March 3, 2014. Shortly before the commencement of its bankruptcy proceedings on March 10, 2014 (the “Petition Date”), the Secret Service and the

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<sup>1</sup> See Motion for Order (I) Approving Coin Valuations and Distribution Schedule of Error Coins to Victim/Creditors, and (II) Granting Related Relief Pursuant to Sections 105 and 363 of the Bankruptcy Code filed June 1, 2017 [Dkt. No. 667] (the “Distribution Motion”) and the Order thereon entered July 25, 2017 [Dkt. No. 689] (the “Distribution Order”).

Department of Justice raided the Debtor's business offices, and seized the Debtor's computers, documents and valuable coins as part of an ongoing criminal investigation. Hannes eventually agreed to enter into a plea agreement with the U. S. Government in which he pled guilty to one count of 18 U.S.C. § 1343 wire fraud charge as set forth in Count One of a Bill of Information in the criminal case and, among other things, agreed to pay restitution to the victims of fraud. Hannes is currently serving a 30 month sentence at the federal prison in Butner, North Carolina.

**B. Procedural Posture of the Bankruptcy Case**

On March 18, 2014, the United States Trustee ("UST") filed a Stipulation Appointing Chapter 11 Trustee [Docket No. 15], which was signed by both the Debtor and its attorney and approved by the Bankruptcy Court on March 18, 2014 [Docket No. 16]. An Order was entered by the Court on March 21, 2014 approving the UST's Application for the Appointment of a Chapter 11 Trustee, appointing R. Todd Neilson as Trustee of the Debtor's estate [Docket No. 22]. Thereafter upon notice and hearing, the case was converted to a chapter 7 and R. Todd Neilson was appointed as the chapter 7 Trustee [Docket 108].

On March 22, 2016, Mr. Neilson filed his Withdrawal of Trustee [Docket 564]. The UST filed its Notice of Appointment of Trustee and Fixing of Bond; Acceptance of Appointment as Trustee dated April 1, 2016 [Docket 566], appointing Weneta M. A. Kosmala as the chapter 7 trustee of the Debtor's estate.

**C. Error Coin Distribution**

During his appointment, Mr. Neilson entered into an agreement with the Government to return the coins it had seized to the Debtor's estate for distribution to Victim/Creditors as restitution. The initial distribution plan was accepted by the Government, approved by Order of the Bankruptcy Court dated January 28, 2016 [Dkt. No. 494]<sup>2</sup> and approved by the District Court in the criminal case. Thereafter, Victim/Creditors were provided an opportunity to opt-out of receiving their allocated share of Error Coins. Thirty (30) of the Victim/Creditors advised the Trustee's

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<sup>2</sup> Order (I) Authorizing Implementation of Trustee's Proposed Plan for Liquidation of Seized Items and Disbursement of Assets to Victim/Creditors of Fraud in the Bankruptcy Case in Accordance with Coordination Agreement with United States Government, and (II) Granting Relief Pursuant to Sections 105 and 363 of the Bankruptcy Code [Dkt. No. 494] entered January 28, 2016 (the "Initial Distribution Plan Order").

professionals of their determination to opt-out of receiving Error Coins under the Initial Distribution Plan Order.

However, the initial distribution plan was later found to be untenable as it was premised on a valuation later determined to be incomplete and faulty. Therefore, in October 2016, the Trustee requested and obtained a Court order authorizing her to modify the Initial Distribution Plan Order, retain GreatCollections.com d/b/a Great Collections ("Great Collections") and Professional Coin Grading Service ("PCGS") coin valuation experts, establish a revised schedule for the allocation of Error Coins, and set a new opt-out deadline.<sup>3</sup> Following the completion of the new coin valuation by PCGS, the Trustee filed and served the Distribution Motion which explained in detail the new distribution schedule, notified each Victim/Creditor of their allocated Error Coins and provided them an opportunity to opt-out of receiving Error Coins by a deadline of July 3, 2017. Failure to expressly opt-out would result in the Victim/Creditor being deemed, by default, to have opted-in to receive their allocated share of Error Coins.

In accordance with the Distribution Order and the allocations set forth in the Distribution Motion, the Trustee caused Great Collections to distribute Error Coins to Victim/Creditors. As the Thompsons did not fill out an opt-out form by the July 3, 2017 deadline, Great Collections shipped them their allocated Error Coins. Upon receipt, the Thompsons advised the Trustee's professionals that they did not want to receive Error Coins on account of their claims and wished to return them to Great Collections. Notwithstanding their failure to meet the July 3<sup>rd</sup>, 2017 opt-out deadline, the Thompsons had notified the prior trustee of their determination to opt-out of the Initial Distribution Plan in accordance with the terms of the Initial Distribution Plan Order approximately seventeen months earlier.

There are 376 Victim/Creditors in this case. Thirty (30) of those Victim/Creditors determined to opt-out of receiving Error Coins in 2016 under the initial distribution plan (the

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<sup>3</sup> See Application to Employ GreatCollections.com as Auctioneer Notice Of Motion And Motion For Order Authorizing The Trustee To (I) Retain GreatCollections.Com d/b/aGreat Collections As Auctioneer, (II) Modify, In Part, Asset Distribution Plan, And (III) Set New Opt-Out Deadline For Creditors To Determine Whether To Receive Error Coins In Partial Payment Of Their Claims And Sell Coins Not Distributed To Creditors Free And Clear Of Liens, Claims And Interests dated September 1, 2016 [Dkt. No. 623] and Order thereon dated October 12, 2016 [Dkt. No. 634].

1 “Initial Opt-Out Parties”). In response to the Distribution Motion and Distribution Order, only  
2 eleven (11) of the Initial Opt-Out Parties failed to notify the Trustee’s professionals of their opt-in /  
3 opt-out determination (the “Subject Victim/Creditors”). The Thompsons are among those eleven  
4 Subject Victim/Creditors.<sup>4</sup>

5 While the Trustee believes that full and adequate notice (and a detailed explanation) of the  
6 revised distribution plan and opt-out deadline were provided to all Victim/Creditors, the Trustee  
7 appreciates that there may have been some confusion by the Thompsons that their prior opt-out  
8 determination under the Initial Distribution Plan Order would be applicable to the new opt-out  
9 deadline set under the Distribution Order. Therefore, the Trustee has agree to enter into the  
10 Stipulation to allow the Thompsons to opt-out of receiving Error Coin in accordance with the terms  
11 of the Stipulation. Under the particular circumstances of this case, the Trustee believes that the  
12 Stipulation should be approved.

#### 13 IV.

#### 14 AUTHORITY

15 In pertinent part, Section 105(a) of the Bankruptcy Code empowers the bankruptcy court to  
16 “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of  
17 this title. . . .” 11 U.S.C. § 105(a). As a general rule, the bankruptcy court may not use its section  
18 105(a) powers to authorize an action that would be inconsistent with or prohibited by another  
19 provision of the Bankruptcy Code. *See Norwest Bank Worthington v. Ahlers*, 485 U.S. 197, 206  
20 (1988). Rather, section 105(a) must be used in combination with another provision of the  
21 Bankruptcy Code.

22 The Court in this case previously authorized the Trustee to distribute Error Coins pursuant to  
23 Sections 105 and 363 of the Bankruptcy Code. The Court has also authorized the Trustee to allow  
24 Victim/Creditors to opt-out of receiving their allocated Error Coins subject to the terms of the  
25 Distribution Order. As the Thompsons had previously notified the prior trustee of their decision to  
26 opt out of receiving Error Coins, albeit under the Initial Distribution Plan Order rather than the  
27

28 <sup>4</sup> Another Subject Victim/Creditor, Igor Pavlovsky, moved the Court and obtained an order authorizing him to opt-out  
of the Error Coin Distribution [Dkt. 716].

1 modified one, the Trustee submits that approval of the Stipulation is consistent with the goal of  
2 allowing Victim/Creditors to opt-out of receiving Error Coins upon proper notice to the Trustee and  
3 entry of an order approving this Motion is appropriate and consistent with Section 105(a) of the  
4 Bankruptcy Code.

5 V.

6 **CONCLUSION**

7 **WHEREFORE**, the Trustee respectfully requests that this Court enter an order: (a) granting  
8 the Motion; (b) approving the stipulation between the Trustee and the Thompsons; (c) authorizing  
9 the Trustee to take such actions as are necessary and appropriate to implement the stipulation with  
10 the Thompsons, and (d) granting such other and further relief as is just and proper under the  
11 circumstances.

12 Dated: January 3, 2018

PACHULSKI STANG ZIEHL & JONES LLP

13  
14 By /s/ Linda F. Cantor  
Linda F. Cantor

15  
16 Counsel for Weneta M.A. Kosmala, Chapter 7  
Trustee

**DECLARATION OF WENETA M.A. KOSMALA**

I, Weneta M.A. Kosmala, declare as follows:

1. I am the duly appointed chapter 7 trustee (the "Trustee") for the estate of The Tulving Company, Inc., debtor in the above-captioned case (the "Debtor"). I make this declaration ("Declaration") in support of the *Notice of Motion and Motion For Order Approving Trustee's Stipulation With Creditors Susan Thompson and Lawrence Thompson Regarding Creditors' Determination To Opt Out Of Error Coin Distribution* (the "Motion"). All capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Motion.

2. The Motion seeks approval of a stipulation that I propose to enter into, solely in my capacity as Trustee, with the Thompsons, a true and correct copy of which is appended hereto as **Exhibit 1**. The Stipulation provides for the Thompsons to opt-out of receiving their allocation of Error Coins which were distributed in accordance with the Distribution Order entered by the Court, as described more fully below and in the Stipulation.<sup>5</sup>

3. Except as otherwise indicated, all facts set forth in this Declaration are based on my personal knowledge (albeit my own or that gathered by professionals rendering services to me), or my opinion based on experience, knowledge, and information concerning the estate. If called upon, I can and will competently testify to the facts stated herein.

4. The Tulving Company, Inc. was in the business of selling and purchasing gold, silver, coins, bullion, and other precious metals through its internet website or by phone. Prior to the filing of this bankruptcy case, customer complaints concerning delayed or undelivered orders were increasingly made to the Better Business Bureau against the Debtor. In early March 2014, a class action lawsuit was filed against the Debtor and its president and sole shareholder, Hannes Tulving in the United States District Court for the Northern District of California.

5. The Debtor ceased operations on or about March 3, 2014. I am informed and believe that shortly before the commencement of its bankruptcy proceedings on March 10, 2014, the Secret

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<sup>5</sup> See *Motion for Order (I) Approving Coin Valuations and Distribution Schedule of Error Coins to Victim/Creditors, and (II) Granting Related Relief Pursuant to Sections 105 and 363 of the Bankruptcy Code* filed June 1, 2017 [Dkt. No. 667] and the Order thereon entered July 25, 2017 [Dkt. No. 689].



Service and the Department of Justice raided the Debtor's business offices, and seized the Debtor's computers, documents and valuable coins as part of an ongoing criminal investigation. Hannes eventually agreed to enter into a plea agreement with the U. S. Government in which he pled guilty to one count of 18 U.S.C. § 1343 wire fraud charge as set forth in Count One of a Bill of Information in the criminal case and, among other things, agreed to pay restitution to the victims of fraud. I am informed and believe that Hannes is currently serving a 30 month sentence at the federal prison in Butner, North Carolina.

**A. Procedural Posture of the Bankruptcy Case**

6. On March 18, 2014, the United States Trustee filed a Stipulation Appointing Chapter 11 Trustee [Docket No. 15], which was signed by both the Debtor and its attorney. The Stipulation was approved by the Bankruptcy Court on March 18, 2014 [Docket No. 16] and an Order was entered by the Court on March 21, 2014 approving the UST's Application for the Appointment of a Chapter 11 Trustee, appointing R. Todd Neilson as Trustee of the Debtor's estate [Docket No. 22]. Thereafter upon notice and hearing, the case was converted to a chapter 7 and R. Todd Neilson was appointed as the chapter 7 Trustee [Docket 108].

7. On March 22, 2016, Mr. Neilson filed his Withdrawal of Trustee [Docket 564]. The UST filed its Notice of Appointment of Trustee and Fixing of Bond; Acceptance of Appointment as Trustee dated April 1, 2016 [Docket 566], appointing me as the chapter 7 trustee of the Debtor's estate.

**B. Error Coin Distribution**

8. During his appointment, Mr. Neilson entered into an agreement with the Government to return the coins it had seized to the Debtor's estate for distribution to Victim/Creditors as restitution. The initial distribution plan was accepted by the Government, approved by Order of the Bankruptcy Court dated January 28, 2016 [Dkt. No. 494]<sup>6</sup> and approved by the District Court in the criminal case. Thereafter, Victim/Creditors were provided an opportunity to opt-out of receiving

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<sup>6</sup> Order (I) Authorizing Implementation of Trustee's Proposed Plan for Liquidation of Seized Items and Disbursement of Assets to Victim/Creditors of Fraud in the Bankruptcy Case in Accordance with Coordination Agreement with United States Government, and (II) Granting Relief Pursuant to Sections 105 and 363 of the Bankruptcy Code [Dkt. No. 494] entered January 28, 2016.

1 their allocated share of Error Coins. Thirty (30) of the Victim/Creditors advised the trustee's  
2 professionals of their determination to opt-out of receiving Error Coins under the Initial Distribution  
3 Plan Order.

4 9. However, the initial distribution plan was later found to be untenable as it was  
5 premised on a valuation later determined to be incomplete and faulty. Therefore, in October 2016, I  
6 requested and obtained a Court order authorizing me to modify the Initial Distribution Plan Order,  
7 retain Great Collections and Professional Coin Grading Service as coin valuation experts, establish a  
8 revised schedule for the allocation of Error Coins, and set a new opt-out deadline.<sup>7</sup> Following the  
9 completion of the new coin valuation by PCGS, I caused to be filed and served the Distribution  
10 Motion which explained in detail the new distribution schedule, notified each Victim/Creditor of  
11 their allocated Error Coins and provided them an opportunity to opt-out of receiving Error Coins by  
12 a deadline of July 3, 2017. Failure to expressly opt-out would result in the Victim/Creditor being  
13 deemed, by default, to have opted-in to receive their allocated share of Error Coins.

14 10. In accordance with the Distribution Order and the allocations set forth in the  
15 Distribution Motion, I directed Great Collections to distribute Error Coins to Victim/Creditors. As  
16 the Thompsons did not fill out an opt-out form by the July 3rd, 2017 deadline, Great Collections  
17 shipped them their allocated Error Coins. Upon receipt, the Thompsons promptly advised my  
18 professionals that they did not want to receive Error Coins on account of their claims and wished to  
19 return them to Great Collections. Notwithstanding their failure to meet the July 3, 2017 opt-out  
20 deadline, the Thompsons had notified the prior trustee of their determination to opt-out of the initial  
21 distribution plan in accordance with the terms of the Initial Distribution Plan Order approximately  
22 seventeen months earlier.

23  
24  
25  
26 <sup>7</sup> See Application to Employ GreatCollections.com as Auctioneer Notice Of Motion And Motion For Order Authorizing  
27 The Trustee To (I) Retain GreatCollections.Com d/b/aGreat Collections As Auctioneer, (II) Modify, In Part, Asset  
28 Distribution Plan, And (III) Set New Opt-Out Deadline For Creditors To Determine Whether To Receive Error Coins In  
Partial Payment Of Their Claims And Sell Coins Not Distributed To Creditors Free And Clear Of Liens, Claims And  
Interests dated September 1, 2016 [Dkt. No. 623] and Order thereon dated October 12, 2016 [Dkt. No. 634].

11. There are 376 Victim/Creditors in this case. Thirty (30) of those Victim/Creditors determined to opt-out of receiving Error Coins in 2016 under the Initial Distribution Plan. In response to the Distribution Motion and Distribution Order, only eleven (11) of those Initial Opt-Out Victim/Creditors failed to notify my professionals of their opt-in / opt-out determination. The Thompsons are among those eleven Subject Victim/Creditors.<sup>8</sup>

12. While I believe that full and adequate notice (and a detailed explanation) of the revised distribution plan and opt-out deadline were provided to all Victim/Creditors, I appreciate that there may have been some confusion by the Thompsons that their prior opt-out determination under the Initial Distribution Plan Order would be applicable to the new opt-out deadline set under the Distribution Order. Therefore, only with respect to the Thompsons, and subject to approval by the Court, I have agreed to enter into the Stipulation to allow the Thompsons to opt-out of receiving Error Coins in accordance with the terms of the Stipulation. In the exercise of my business judgment as Trustee, I believe that under the particular circumstances of this case good cause exists to allow the Thompsons to opt-out of receiving their Error Coins and respectfully submit that the Motion should be granted and the Stipulation should be approved.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 5<sup>th</sup> day of January, 2018, at Santa Ana, California.

  
Weneta M. A. Kosmala

<sup>8</sup> Another Subject Victim/Creditor, Igor Pavlovsky, moved the Court and obtained an order authorizing him to opt-out of the Error Coin Distribution [Dkt. 716].

# Exhibit 1

Linda F. Cantor (CA Bar No. 153762)  
Jason S. Pomerantz (CA Bar No. 157216)  
PACHULSKI STANG ZIEHL & JONES LLP  
10100 Santa Monica Blvd., 13<sup>th</sup> Floor  
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Counsel for Weneta M. A. Kosmala, Chapter 7 Trustee for  
The Tulving Company, Inc.

**UNITED STATES BANKRUPTCY COURT  
CENTRAL DISTRICT OF CALIFORNIA  
SANTA ANA DIVISION**

In re:

THE TULVING COMPANY, INC., a California  
corporation,

Debtor.

Case No.: 8:14-bk-11492-ES

Chapter 7

**STIPULATION BY AND BETWEEN  
CHAPTER 7 TRUSTEE, ON THE ONE  
HAND, AND CREDITORS SUSAN  
THOMPSON AND LAWRENCE  
THOMPSON, ON THE OTHER HAND,  
REGARDING CREDITORS'  
DETERMINATION TO OPT OUT OF  
ERROR COIN DISTRIBUTION**

[No Hearing Required, Unless Requested]

This Stipulation is made by and between Weneta M.A. Kosmala, the duly appointed and  
acting chapter 7 trustee ("Trustee") in the above-captioned case of The Tulving Company, Inc. (the  
"Debtor"), on the one hand, and creditors Susan Thompson and Lawrence Thompson (collectively,  
the "Thompsons"), on the other hand, in respect to the following:

**RECITALS**<sup>1</sup>

**WHEREAS**, the Trustee's professionals are in the process of making distributions of Error Coins (the "Error Coin Distributions") to Victim/Creditors of the Debtor pursuant to the Distribution Order entered by the Court;<sup>2</sup> and

**WHEREAS**, the Distribution Order required that any Victim/Creditor not wishing to receive their Error Coin Distribution fill out an "opt-out" form and return it to the Trustee no later than July 3, 2017, and failure to do so would result in the Victim/Creditor being deemed, by default, to have opted-in<sup>3</sup>; and

**WHEREAS**, the Thompsons did not fill out an opt-out form by the July 3, 2017 deadline but had, approximately seventeen months earlier, notified the Trustee of their desire to "opt-out" of receiving Error Coins in connection with a previous coin distribution plan that was subsequently modified and replaced by the distribution plan described in detail in the Distribution Motion, which was served upon the Thompsons; and

**WHEREAS**, the Thompsons, having been deemed to have opted in to the Error Coin Distribution, were shipped the Error Coins allocated to them (the "Thompson Error Coins") by Great Collections pursuant to the Distribution Order; and

**WHEREAS**, promptly after their receipt of the Thompson Error Coins, the Thompsons notified the Trustee's professionals of their request to opt-out of the Error Coin Distribution and to return the Thompson Error Coins in accordance with their earlier determination to opt-out of the previous coin distribution plan; and

**WHEREAS**, while the majority of Victim/Creditors who had opted out of receiving Error Coins under the previous coin distribution plan subsequently notified the Trustee's professionals of

<sup>1</sup> Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Distribution Motion (as defined below).

<sup>2</sup> See *Motion for Order (I) Approving Coin Valuations and Distribution Schedule of Error Coins to Victim/Creditors, and (II) Granting Related Relief Pursuant to Sections 105 and 363 of the Bankruptcy Code* filed June 1, 2017 [Dkt. No. 667] (the "Distribution Motion") and the Order thereon entered July 25, 2017 [Dkt. No. 689] (the "Distribution Order").

<sup>3</sup> Distribution Order at paragraph 4.

1 their determination to either "opt-in" or "opt-out" of the Error Coin Distribution described in the  
2 Distribution Motion, eleven Victim/Creditors (inclusive of the Thompsons) did not do so; and

3 **WHEREAS**, while the Trustee believes that full and adequate notice (and a detailed  
4 explanation) of the revised distribution plan and opt-out deadline were provided to the Thompsons  
5 pursuant to the Distribution Motion, the Trustee appreciates that there may have been some  
6 confusion by the Thompsons concerning the applicability of their prior opt-out determination to the  
7 new opt-out deadline notwithstanding the terms of the Distribution Motion and the Distribution  
8 Order; and

9 **WHEREAS**, under the particular circumstances of this case and the Thompsons' previous  
10 notification to the Trustee of their decision to opt-out of receiving Error Coins, and subject to order  
11 of the Bankruptcy Court approving this Stipulation, the Trustee will consent to the Thompsons'  
12 request to opt-out of the Error Coin Distribution and allow the Thompsons to return the Thompson  
13 Error Coins under the terms set forth herein:

14 **NOW, THEREFORE**, the Trustee and the Thompsons hereby stipulate and agree as  
15 follows:

16 **STIPULATION**

- 17 1. The Thompsons shall be deemed to have opted-out of the Error Coin Distribution.  
18 2. The Thompsons acknowledge that it is possible that they might not receive any other  
19 form of distribution from the Debtor's bankruptcy estate.  
20 3. The Thompsons shall return the Thompson Error Coins to Great Collections by Priority  
21 Mail and the cost of such shipment shall be borne by the Debtor's estate.  
22 4. The Thompsons hereby certify that the Thompson Error Coins that they will return to  
23 Great Collections pursuant to this Stipulation are the same Error Coins that were shipped to them by  
24 Great Collections.

1 Dated: November , 2017

PACHULSKI STANG ZIEHL & JONES LLP


2  
3 By /s/ Linda F. Cantor  
Linda F. Cantor

4 Counsel for R. Weneta M.A. Kosmala, Chapter  
5 7 Trustee of The Tulving Company, Inc.

6 Dated: November 18 2017

7  
8 By   
Susan Thompson

9  
10 Dated: November 18, 2017

11  
12 By   
Lawrence Thompson

PACHULSKI STANG ZIEHL & JONES LLP  
ATTORNEYS AT LAW  
LOS ANGELES, CALIFORNIA



**PROOF OF SERVICE OF DOCUMENT**

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:

A true and correct copy of the foregoing document **NOTICE OF MOTION AND MOTION FOR ORDER APPROVING TRUSTEE'S STIPULATION WITH CREDITORS SUSAN THOMPSON AND LAWRENCE THOMPSON, REGARDING CREDITORS' DETERMINATION TO OPT OUT OF ERROR COIN DISTRIBUTION** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

**1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):** Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On **January 3, 2018**, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

☒ Service information continued on attached page

**2. SERVED BY UNITED STATES MAIL:**

On **January 3, 2018**, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

☒ Service information continued on attached page

**3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL**

(state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on **January 3, 2018**, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

***Via Federal Express***

The Honorable Erithe A. Smith  
United States Bankruptcy Court - Central District of California  
Ronald Reagan Federal Building and Courthouse  
411 West Fourth Street, Suite 5040 / Courtroom 5A  
Santa Ana, CA 92701-4593

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

January 3, 2018

Date

Janice G. Washington

Printed Name

/s/ Janice G. Washington

Signature

**1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):**

Wesley H Avery on behalf of Consumer Privacy Ombudsman Wesley H Avery  
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